

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

IN RE:

CASE NO. 3:11-bk-07414-PMG

DUANE A. RING
and SANDRA A. RING

Debtors.

**ORDER GRANTING DEBTOR'S MOTION TO DETERMINE
SECURED STATUS OF TD BANK, N.A. AND
TO STRIP LIEN EFFECTIVE UPON DISCHARGE**

THIS CASE was before the Court on February 2, 2012, for an evidentiary hearing on the Debtors' Motion dated October 11, 2011, to Determine Secured Status of the Claimant, TD Bank, N.A., and to Strip Lien Effective Upon Discharge. [Doc. No. 8] Present at this hearing were the Debtor, Duane A. Ring, and his counsel, Anthony W. Chauncey. No counsel or representative appeared for TD Bank, N.A. Having received proffer of the evidence in support of the Motion and being otherwise fully advised in the premises, it is upon due consideration that the Court

ORDERED:

1. The Debtors' Motion to Determine Secured Status of the Claimant, TD Bank, N.A., and to Strip Lien Effective Upon Discharge was served on October 11, 2011. [Doc. No. 8]
2. In accordance with the Notice of Preliminary Hearing [Doc. 11] served on TD Bank, N.A. on October 14, 2011, the Court conducted a non-evidentiary preliminary hearing on December 21, 2011, to consider and act upon the Debtors' Motion and to determine scheduling issues pertaining to the Motion to Determine Secured Status of the Claimant, TD Bank, N.A., and to Strip Lien Effective Upon Discharge.

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3. No counsel or representative for TD Bank, N.A., appeared at the preliminary hearing held on December 21, 2011. The Debtors requested the Court to set their Motion for a final evidentiary hearing after notice to said Creditor.

4. On December 21, 2011, the Court set a Final Evidentiary Hearing on the Debtors' Motion for February 2, 2012, at 3:00 p.m. A copy of this Notice was served on TD Bank, N.A. by the Clerk of this Court. [Doc. 24]

5. On February 2, 2012, the Court conducted a final, evidentiary hearing in this case. The Debtor, Duane Alan Ring, testified in his own behalf and expressed the opinion that the fair market value of his property is \$108,000.00.

6. Based on the foregoing, the Motion to Determine Secured Status of the Lien of the Claimant, TD Bank, N.A., and to Strip Lien filed by the Debtors, Duane A. Ring and Sandra A. Ring, is granted pursuant to 11 U. S. C. § 506(a).

7. The value of the property located at 5383 Pine Crest Road, Live Oak, Florida 32060, and more particularly described in Exhibit "A" as attached hereto is \$108,000.00.

8. Wells Fargo Home Mortgage, holds a first priority mortgage lien in the amount of \$197,783.26 [Claim # 5] in the Debtors' real property by virtue of that certain Mortgage dated February 26, 2009, recorded in Official Record Book 1515, Page 446, Public Records of Suwannee County, Florida.

9. In accordance with §§506(a) and 1322(b)(2), United States Bankruptcy Code, the mortgage lien held by TD Bank, N.A. shall be stripped, canceled, vacated and released upon entry of an Order of Discharge. In addition, any Proof of Claim filed by the creditor, TD Bank, N.A., should be disallowed as a secured claim but allowed in full as an unsecured Proof of Claim.

10. The second mortgage held by TD Bank, N.A. recorded on February 26, 2009, in Official Record Book 1515, Page 463, Public Records of Suwannee County, Florida, shall be deemed void and shall be extinguished automatically, without further court order, upon entry of the Debtors' discharge in this Chapter 13 Case; provided, however, that the Court reserves jurisdiction to consider, if appropriate, the avoidance of TD Bank, N.A.'s lien prior to the entry of the Debtors' discharge. Further, if this case is converted to a case under Chapter 7, or if this Chapter 13 Case is dismissed, the mortgage will no longer be considered void and shall be restored as a secured debt for the full amount of TD Bank, N.A.'s claim.

DATE: February 3, 2012, in Jacksonville, Florida.

Paul M. Glenn
Paul M. Glenn
United States Bankruptcy Judge

Copies furnished to:

Douglas W. Neway, Esquire, Post Office Box 4308, Jacksonville, Florida 32201
Bharat B. Masrani, President and Chief Executive Officer, TD Bank, N.A., at his corporate headquarters, Two Portland Square, Portland, Maine 04112-9540
United States Corporation Company, Authorized Agent, TD Bank, N.A., 1201 Hays Street, Tallahassee FL 32301
Anthony W. Chauncey, Esquire, Post Office Drawer 1288, Live Oak, Florida 32064

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RECORDED IN THE US BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
J.B. VOL. 54, NO. 7484

I certify the foregoing to be true
and correct copy of the original.
CLERK OF COURT
U. S. BANKRUPTCY COURT

By: M. Sosnuchi
Dated: February 3, 2012

Exhibit A

Part of the S½ of SW¼ of Section 7, Township 2 South, Range 15 East, Suwannee County, Florida, being more particularly described as follows: For Point of Reference, commence at the Northwest corner of said S½ of SW¼, thence run N 88°30'55" E, along the North line of said S½ of SW¼, a distance of 850.90 feet to the Point of Beginning; thence continue N 88°30'55" E, along said North line, a distance of 1067.93 feet to the Southerly right of way line of County Road No. 136-A, said Southerly right of way line being in a curve concaved Northeasterly having a radius of 1472.39 feet; thence run along and around said curve a chord bearing and distance S 35°02'06" E, 199.41 feet to the Westerly right of way line of Pine Crest Road, said Westerly right of way line being in a curve concaved Northwesterly having a radius of 275.00 feet; thence run along and around said curve a chord bearing and distance of S 38°40'47" W, 98.55 feet to the Point of Compound curve concaved Northwesterly having a radius of 607.76 feet; thence run along and around said curve a chord bearing and distance of S 32°17'27" W, 696.91 feet to the terminus of said curve; thence continue along said Westerly right of way line S 58°01'16" W, a distance of 195.79 feet; thence run N 28°29'38" W, a distance of 844.84 feet to the Point of Beginning.

Parcel Identification Number: 00098001000

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